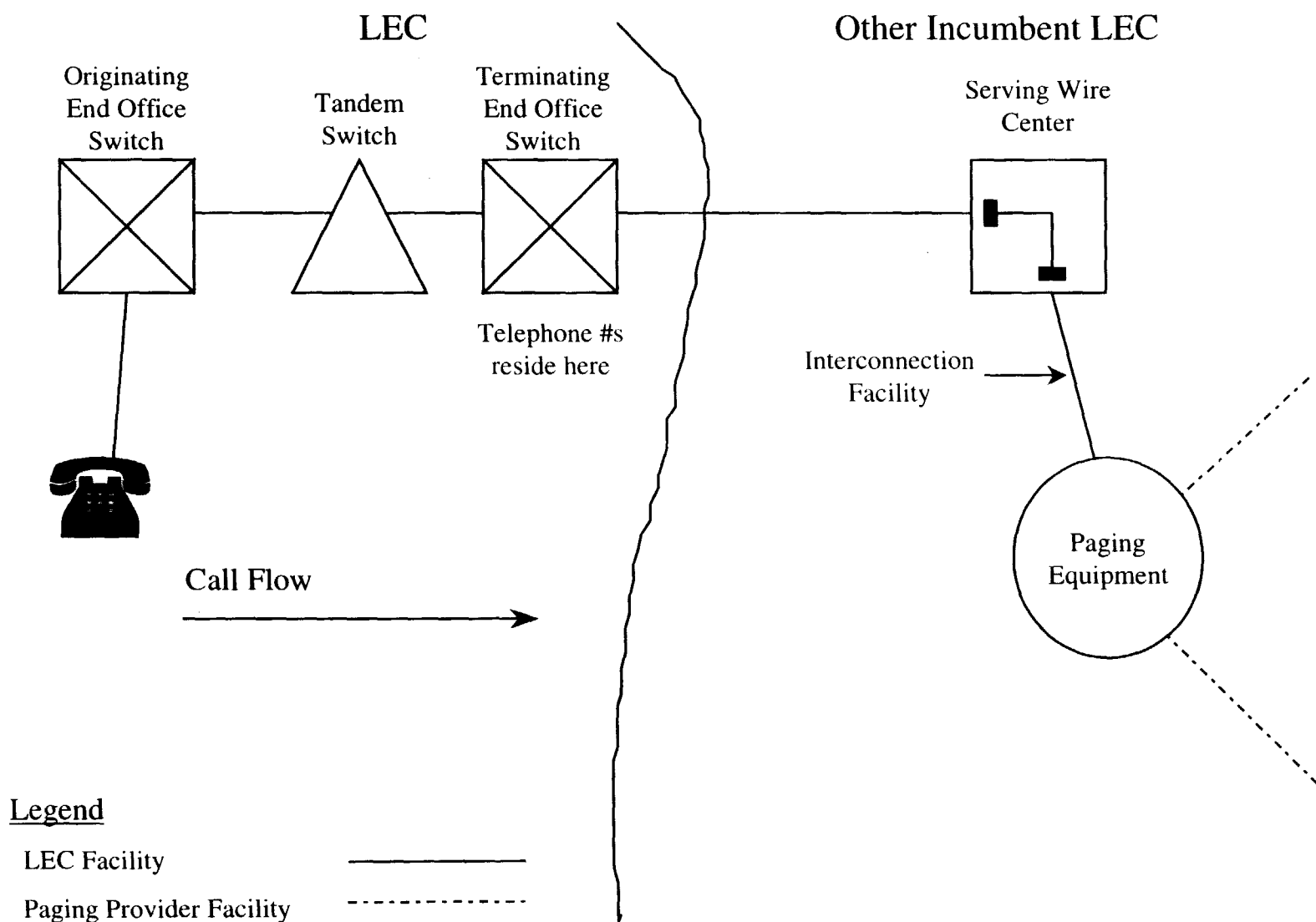
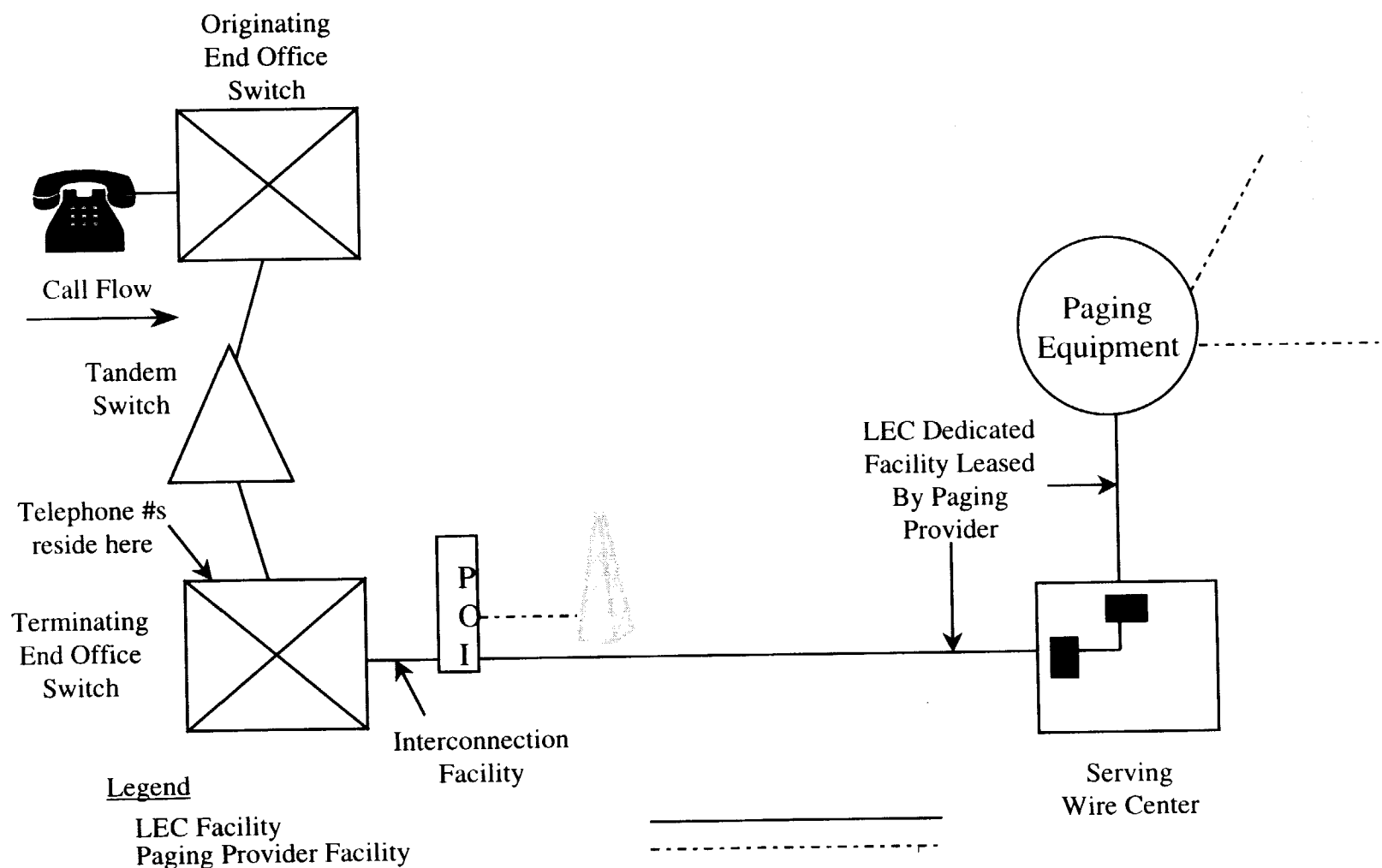


# Out of Serving Area Requirements (Continued)

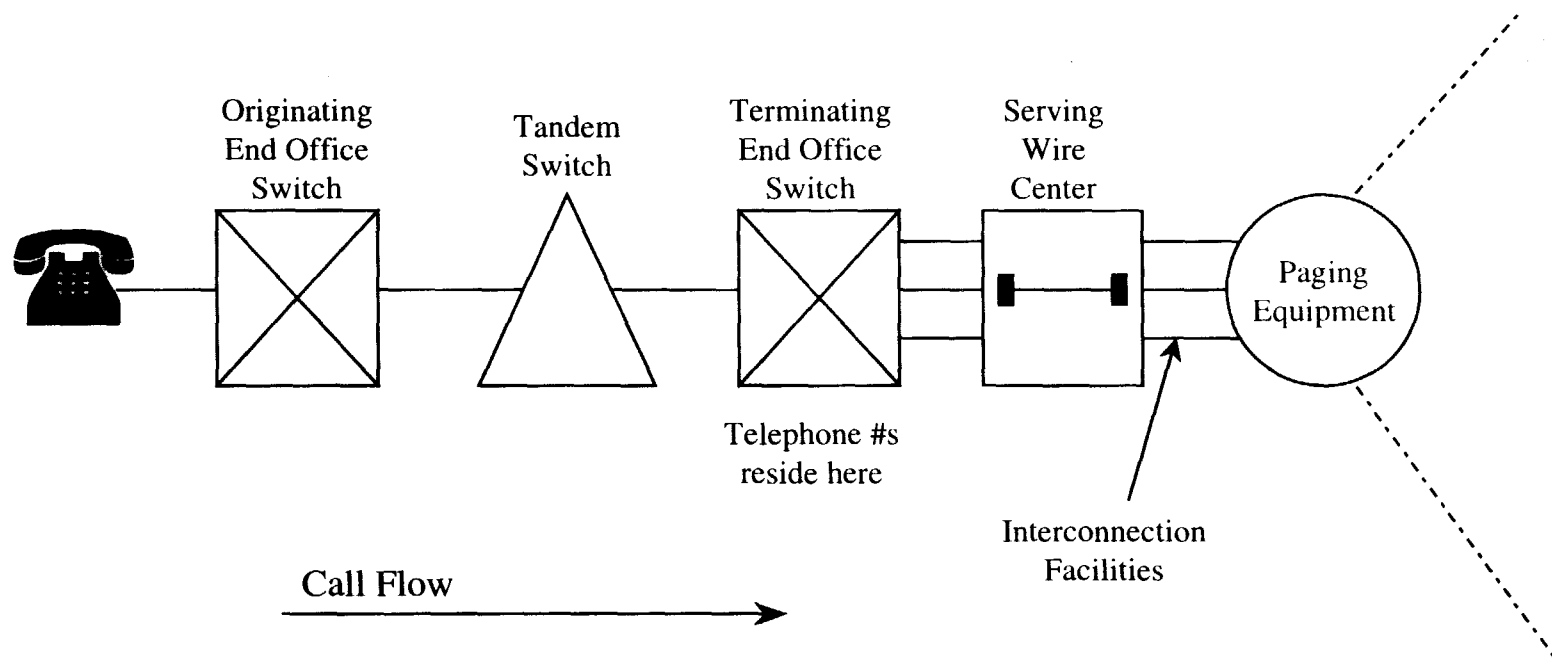


# Type 1 Interconnection

## Combination of Interconnection and Distribution Traffic



# Type 1 Interconnection Paging Resale



## Legend

LEC Facility



Paging Provider Facility





## **USTA Whitepaper on LEC-Paging Interconnection**

**June 1998**

## Introduction and Summary

The Commission is currently reconsidering its rules governing interconnection between paging carriers and LECs. In the Local Competition Order, the Commission largely adopted a one-size-fits-all approach to LEC-CMRS interconnection, finding in particular that all CMRS providers, including providers of paging services, are entitled to compensation for the transport and termination of calls originating on the LEC's network. The Order's treatment of paging carriers was misguided. As a matter of statutory interpretation, paging carriers do not qualify for reciprocal compensation. Indeed, paging carriers do not even meet the requirements for reciprocal compensation under the Commission's own rules. As a matter of policy, moreover, the Commission's approach to LEC-paging interconnection has ignored basic principles of efficient pricing regulation: network costs should be recovered from the party that caused them. In the case of LEC-paging interconnection, paging carriers unambiguously impose costs on LECs by ordering dedicated facilities. It is irrational and inefficient to require LECs and their local exchange customers to bear those costs.

Section 251(b)(5) of the 1996 Act does not authorize payment of compensation to paging carriers. As an initial matter, both section 251(b)(5) itself and section 252(d)(2) make clear that Congress authorized payment of compensation only where there is a mutual exchange of traffic between an interconnecting carrier's network and the LEC's network. LEC-Paging interconnection does not fit this mold. Moreover, the reciprocal compensation obligation extends only to the "transport" and "termination" of traffic. Paging carriers do not switch -- and hence do not terminate -- traffic; and if the point of interconnection between the LEC and the paging carrier is at the paging terminal, the paging carrier does not transport traffic originated on the LEC's network either.

The Commission should honor this distinction because it reflects a fundamental difference between the incentives faced by two-way CMRS providers on the one hand and paging service providers on the other. Because both two-way CMRS providers and LECs must share the costs of facilities used to interconnect their respective networks, both will seek to negotiate efficient network arrangements for the exchange of traffic. Experience bears out this prediction: CMRS providers have quickly and for the most part without regulatory intervention negotiated interconnection agreements with LECs pursuant to section 252. Paging companies, on the other hand, have no such incentives.

One guiding principle of the 1996 Act is the importance of private negotiations. Thus, no matter what rule it adopts, the Commission should make clear that LECs' duties under section 251(b) must be implemented pursuant to the negotiation and arbitration process of section 252. Paging carriers need not undertake such negotiations -- they may continue to take service out of state tariffs. But if they do so, they must pay for the services and facilities provided to them according to the terms of those tariffs.

As part of the Reconsideration process, the Commission should also address the issues raised by the Application for Review filed by SBC, which challenges the interpretation of the Commission's existing rules contained in a letter from the Chief of the Common Carrier Bureau. This clarification is of crucial importance to all industry participants, as several complaints involving LEC-Paging Interconnection are currently pending before the Commission.

In addressing the proper interpretation of its existing rules, the Commission should make clear that 1) existing rules, by their terms, do not apply to one-way paging providers; 2) section 51.703(b) of the Commission's rules applies to traffic only, not to facilities; and 3) to the extent paging carriers seek to receive traffic and facilities without paying tariff charges, nothing in the Commission's rules prevents the LEC from adopting a network configuration for delivery of such traffic that permits a LEC to increase the efficiency of its network and to recover its costs to the extent possible.

### **Background**

Prior to the enactment of the 1996 Act, the Commission announced its intention to continue its examination of policies related to LEC-CMRS interconnection. See Notice of Proposed Rulemaking, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, 11 FCC Rcd 5020 (1996) ("LEC-CMRS NPRM"). In that NPRM, the Commission articulated general pricing principles governing the rates charged for LEC-CMRS interconnection. First, the Commission made clear that "[t]he cost of a dedicated facility can be attributed directly to the party ordering the service that uses that facility." Id. at 5041, ¶ 43. "To the extent that the benefits of a dedicated facility accrue to the party to whom it is dedicated, it is efficient for that party to pay charges that recover the full cost of the facility" on a non-traffic-sensitive basis. Id.

Following the passage of the 1996 Act, the Commission folded LEC-CMRS interconnection issues into the larger proceeding concerning implementation of the local competition provisions of the 1996 Act. In the Local Competition Order, the Commission determined that all CMRS providers -- including paging carriers -- fall within the scope of section 251(b)(5) of the 1996 Act. See Local Competition Order, 11 FCC Rcd 15499, 15997, ¶¶ 1007-08. The Commission accordingly held that "LECs are obligated, pursuant to section 251(b)(5) (and the corresponding pricing standards of section 252(d)(2), to enter into reciprocal compensation arrangements with all CMRS providers, including paging providers, for the transport and termination of traffic on each other's networks." Id. ¶ 1008. The Commission thus made clear that its rules adopted pursuant to section 251 and 252 are applicable in the context of negotiation and arbitration of interconnection agreements pursuant to section 252.

In addition, the Commission concluded that section 251(b)(5) "prohibits charges such as those some incumbent LECs currently impose on CMRS providers for LEC-originated traffic." Id. at 16016, ¶ 1042. The Commission therefore held that all LECs, as of the effective date of the order, must "cease charging a CMRS provider or other carrier for terminating LEC-originated

traffic and must provide that traffic to the CMRS provider or other carrier without charge." Id.; see 47 C.F.R. § 51.703(b).

The Commission also addressed rates for "transmission facilities that are dedicated to the transmission of traffic between two networks." 11 FCC Rcd at 16027, ¶ 1062. It concluded that carriers should be required to pay the forward-looking costs of dedicated facilities used to carry local traffic from their networks to the network of the other carrier; by the same principle, in the case of two-way facilities, each carrier should be required to pay a rate that reflects the proportion of trunk capacity used to send traffic to the other carrier. Id.; see 47 C.F.R. § 51.709(b).

Two parties -- Kalida Telephone Company and the Local Exchange Carrier Coalition -- sought reconsideration of the Commission's treatment of LEC-Paging interconnection.<sup>1</sup>

In the meantime, Southwestern Bell Telephone Company sought clarification of the Commission's existing rules from the Common Carrier Bureau. In particular, and in response to the failure of paging carriers to pay compensation for facilities ordered from valid state tariffs, Southwestern Bell sought confirmation that section 51.703(b) of the Commission's rules, which prohibits LECs from assessing charges "for local telecommunications traffic that originates on the LEC's network," does not apply to charges for dedicated facilities purchased out of state tariffs. After putting the issue out for comment, the Bureau eventually issued a letter which stated, "the Commission's current rules do not allow a LEC to charge a provider of paging services for the cost of LEC transmission facilities that are used on a dedicated basis to deliver to paging service providers local telecommunications traffic that originates on the LEC's network." See Letter from A. Richard Metzger, Jr., Chief, Common Carrier Bureau, to Mr. Keith Davis, et al., DA 97-2726 (rel. Dec. 30, 1997) ("Metzger Letter") at 3.

SBC filed an Application for Review of that letter; in addition, SBC filed a Petition for Stay with the Commission. SBC has so far held off from seeking relief in court; instead, after discussions with the Common Carrier Bureau staff, SBC has proposed that the Bureau issue a further clarification to its earlier letter that will forestall the disruption that reconfiguration of SBC's interconnection arrangements with paging companies would cause. See Letter of Michael K. Kellogg to A. Richard Metzger, Jr. (filed Mar. 19, 1998). That clarification would make clear that, to the extent paging carriers are not required to pay for facilities used to deliver traffic to their terminals, the LEC is free to use whatever network configuration is most efficient for delivery of that traffic.

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<sup>1</sup> In addition, Arch Communications Group, Inc., AirTouch Paging, and Paging Network, Inc. sought reconsideration of the Commission's determination that paging companies' costs for "terminating" traffic are likely lower than LECs' costs and that LECs' termination costs are therefore not a reasonable proxy for the paging companies' costs. Because paging companies do not terminate traffic originated on LECs' networks at all, they have no termination costs.

## Discussion

The Commission addressed LEC-Paging Interconnection as an afterthought. It adopted LEC-CMRS interconnection rules premised on the mutual exchange of traffic between two independent networks. Paging service providers do not fit this mold. On reconsideration, the Commission should rule that paging carriers do not fall within the scope of the reciprocal compensation obligation of section 251(b)(5). In addition, the Commission should clarify the application of its first set of interconnection rules to paging carriers, making clear that the rules governing charges for "traffic" do not apply to charges for facilities.

### I. SECTION 251(b)(5) DOES NOT AUTHORIZE IMPOSITION OF NON-MUTUAL COMPENSATION OBLIGATIONS.

Section 251(b)(5) of the 1996 Act provides that all local exchange carriers must "establish reciprocal compensation arrangements for the transport and termination of telecommunications." 47 U.S.C. § 251(b)(5) (emphasis added). That section thus contains two requirements. First, it requires that compensation arrangements be reciprocal. The ordinary meaning of the word requires an exchange or mutual arrangement: "[r]eciprocal describes an equivalence, balance, equal counteraction, equal return, or equal sharing." Webster's Third New International Dictionary 1895 (1993). Compensation is reciprocal, therefore, only if both sides of the transaction originate, transport, and terminate traffic.

Paging carriers do not, and cannot, claim that they satisfy this condition. Paging traffic travels one way: from the LEC's network to the paging company's terminal. No traffic originating on the paging carrier's network is terminated on the LEC's network. For this reason alone, the Commission should rule that paging service providers do not fall within the scope of section 251(b)(5)'s reciprocal compensation obligation.

Section 252(d)(2)(A), which establishes the pricing standards for transport and termination, amplifies the requirements of section 251(b)(5). It states that "terms and conditions for reciprocal compensation" are not to be considered "just and reasonable unless," inter alia,

such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier.

47 U.S.C. § 252(d)(2)(A)(i) (emphasis added). In other words, if section 251(b)(5) leaves any room for doubt on this score, section 252(d)(2)(A)(i) confirms that reciprocal compensation arrangements must be genuinely reciprocal.

Second, the compensation obligation extends only to the transport and termination of telecommunications. In its Local Competition Order, the Commission defined transport as the

transmission of local traffic from the interconnection point between two carriers to "the terminating carrier's end office switch that directly serves the called party" or equivalent facility. 47 C.F.R. § 51.701(c). If, as the paging providers argue, the point of interconnection between the LEC and the paging carrier is at the paging provider's terminal, the paging provider does not transport local traffic.

The Commission defined termination as "the switching of local telecommunications traffic at the terminating carrier's end office switch, or equivalent facility, and delivery of such traffic to the called party's premises." *Id.* § 51.701(d). Under this definition, the "termination" function requires the carrier receiving the call to "switch" the traffic. But paging carriers simply do not "switch" traffic. Switching is defined as "[c]onnecting the calling party to the called party." Newton's Telecom Dictionary 578 (11th ed. 1996). A paging terminal never establishes a two-way communications path; the only "party" with whom the caller connects is the paging terminal itself. When a paging terminal receives a call, it captures the information provided by the calling party, and (if the calling party has not already done so) it then disconnects the call. The paging terminal then forwards the stored information through a radio broadcast transmission. A paging terminal thus performs a "store and forward" function, much like a sophisticated telephone answering machine or a telephone answering service. The message may be received by the subscriber many hours later. Indeed, in most cases the originating caller does not know whether the page was delivered at all.

Despite the paging providers' repeated references to the "paging switch," the paging terminal is not a "switch" at all. And because the paging terminal does not carry out this switching function, the paging carrier does not perform call "termination" as defined under the Commission's rules. Indeed, this is a point the Commission itself has already recognized in establishing mutual compensation rules for cellular carriers (but not paging carriers) prior to the 1996 Act. Paging carriers generally use Type 1 interconnection, in which all network functions are performed by the LEC at the terminating end office. The Commission has explained, in pre-1996 Act discussions of reciprocal compensation, that "Type 1 service involves interconnection to a telephone company end office similar to that provided to a private branch exchange (PBX). Under Type 1 interconnection, the telephone company owns the switch serving the cellular network and, therefore, performs the origination and termination of both incoming and outgoing calls." Memorandum Opinion and Order on Reconsideration, Cellular Interconnection Proceeding, 4 FCC Rcd 2369, 2372, ¶ 20 n.16 (1989). Since paging carriers do not switch and terminate traffic, they are not entitled to reciprocal compensation under the 1996 Act, anymore than they were entitled to such compensation prior the Act.<sup>2</sup>

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<sup>2</sup> Even if a paging carrier had Type 2A interconnection, and thus performed some network functions at the paging terminal, it still would not "terminate" traffic within the meaning of the Commission's rules because, unlike a cellular carrier, it never establishes an open circuit to connect the calling party with the called party.

## II. DIFFERENT TREATMENT OF ONE-WAY AND TWO-WAY CARRIERS IS NOT ONLY CONSISTENT WITH THE ACT, IT IS GOOD POLICY

Paging carriers have consistently argued that, for purposes of LECs' reciprocal compensation obligations, they are no different from two-way CMRS carriers and even other land-based LECs. This claim is demonstrably wrong, and to see why it is wrong is to see that their claim of entitlement to reciprocal compensation is likewise utterly unfounded.

A subscriber to a two-way CMRS service can, by definition, both originate calls and receive calls; the subscriber to the LEC obtains the same two basic capabilities. In principle, therefore, two-way CMRS providers, like LECs, have the ability both to originate and to terminate a call within their networks. Obviously, when a call is carried within a network, all origination and termination costs must be recovered from subscribers.

When a call travels from one network to the other, the costs of the call origination and termination must be allocated between the two carriers. The reciprocal compensation provision of the 1996 Act reflects Congress's judgment that each carrier must pay for access to the other's network on a reciprocal basis. Thus, although as a practical matter it may be much more valuable for a CMRS provider to have access to the LEC's network for call termination than it is for the LEC to have access to the CMRS provider's network (just as it may be more valuable for a CLEC to have access to an incumbent LEC's network than the other way around), Congress determined that both CMRS providers and LECs must pay for access to the other's network; the difference in value between the two networks is largely ignored, and each party may only recover its actual termination costs. See 47 U.S.C. § 252(d)(2).

In the case of paging carriers, none of this rationale applies. As an initial matter, paging subscribers pay only for the ability to receive paging messages. To the extent that the paging network has value to its subscribers, it is because paging carriers are able to receive calls from subscribers to two-way services and transmit paging messages to their subscribers. For the paging carriers to argue that the originating LEC should be required to pay the costs of that reception and transmission of messages is tantamount to arguing that their subscribers should not be required to bear the cost of the very service for which they subscribed. There is simply no reason that LECs should be required to subsidize paging subscribers in this way.<sup>3</sup>

The argument is just as clear when it comes to the provision of facilities and the potential application of 47 C.F.R. § 51.709(b) to paging carriers. Paging carriers have argued that because the facilities they order are used only to transmit calls originated on the LECs' network, LECs should be required to bear the cost of those dedicated facilities. This claim flies in the face of the

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<sup>3</sup> This does not mean that the paging providers' co-carrier status is being questioned. The requirement that paging carriers receive traffic from LECs without charge -- i.e., without paying for the incremental costs of the underlying network -- reflects that status.

basic principle that the cost of a facility must be borne by the party who has caused the cost. See LEC-CMRS NPRM, 11 FCC Rcd at 5041, ¶ 43. Facilities used to carry traffic to a paging carrier's terminal have always been configured at the paging carrier's request to serve its business interests. It could hardly be clearer that the paging carrier should therefore be required to bear the costs of those facilities.

Paging carriers attempt to dispute this argument by claiming that these facilities are "part of the LEC's network" the costs of which should be recovered from the LEC's local exchange subscribers. But the facilities used to transport traffic have never been configured to maximize LECs' network efficiency (as they would be if LECs were required to bear the cost); rather, the facilities have been configured according to paging companies' specifications to serve their interests. Unless paging carriers are to have little say over the network configuration used to deliver traffic to their terminals (aside from input as to the technical interface used and the definition of their POI) they must be required to bear the costs of those facilities; otherwise, they will have inadequate incentives to use facilities in an efficient manner.<sup>4</sup>

Again, this concern is not present in the case of two-way CMRS providers and CLECs, because, under the Commission's rules, in both cases each carrier must bear the costs of one-way facilities used to deliver traffic to the other (or the proportionate cost of two-way facilities) so each carrier has the appropriate incentive to utilize only those facilities that are required to ensure efficient interconnection.

### **III. WHATEVER RULES THE COMMISSION ADOPTS, THE OBLIGATIONS OF SECTION 251(b)(5) MUST BE IMPLEMENTED PURSUANT TO SECTION 252.**

The Act makes clear that telecommunications carriers have a choice: they can continue to accept service under existing state tariffs, or they can request interconnection under section 251 and negotiate new terms. What a carrier may not do is order service pursuant to state tariff and then refuse to pay for those services. To the extent that the Commission's rules and orders purport to authorize such conduct, they are contrary to the Act.

Section 251(c)(1) provides that incumbent LECs have a "duty to negotiate in good faith in accordance with section 252 . . . the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) of this section and this subsection." 47 U.S.C. § 251(c)(1). But this duty too is reciprocal, not unilateral; that is, "[t]he requesting telecommunications carrier also has the duty to negotiate in good faith the terms and

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<sup>4</sup> It is hardly an answer to this objection for the paging carriers to admit that they must pay for the portion of the facilities used to deliver non-LEC originated traffic traveling over these dedicated facilities. Because such traffic is only a fraction of the traffic carried, paging carriers will still face distorted incentives.

conditions of such agreements." Id. Section 252, in turn, establishes the procedures for voluntary negotiation, possible mediation, and eventual compulsory arbitration of interconnection agreements, all potentially subject to review in federal district court. See generally 47 U.S.C. § 252(a)-(e).

The Commission thus has no power to implement the reciprocal compensation obligation of section 251(b)(5) directly; instead, it may adopt appropriate rules to guide state commissions in their review and arbitration and federal courts in their review of interconnection agreements reached through negotiation. The Eighth Circuit made this point absolutely unambiguous in Iowa Utilities Board, when it held that "[t]he FCC's rules and regulations have direct effect only in the context of the state-run arbitrations." Iowa Utils. Bd. v. FCC, 120 F.3d 753, 793 n.9 (8th Cir. 1997) cert. granted, 118 S. Ct. 879 (1998). To the extent the Commission seeks to preempt valid state tariffs and contracts directly under the authority of section 251 of the Act, it clearly exceeds its authority.

Some paging carriers have argued that the Commission should adopt its rules governing paging interconnection pursuant to its authority under section 332 of the Act. But whatever the scope of the Commission's authority under section 332, to the extent paging carriers wish to avail themselves of rights granted under section 251 of the Act, the vehicle for doing so is the negotiation and arbitration process established by section 252. For the Commission to attempt to circumvent this private negotiation process for CMRS carriers -- while at the same time granting CMRS providers access to expanded rights to interconnection under section 251 and 252 -- would undermine the balance struck by Congress.

Congress made clear that private negotiations are the primary method for implementation of the Act's requirements. On reconsideration, therefore, the Commission should remove any ambiguity regarding the need to implement the Act's requirements pursuant to the procedures established in section 252.

#### **IV. UNDER EXISTING COMMISSION RULES, PAGING PROVIDERS ARE NOT ENTITLED TO RECIPROCAL COMPENSATION.**

Although the focus of the Commission's effort on reconsideration will properly be to craft rules to place LEC-Paging interconnection on a sound footing, it must nonetheless resolve outstanding issues of interpretation concerning its existing rules. Indeed, such action is urgently needed: several paging carriers have filed complaints against SBC -- as well as against BellSouth, GTE, and U S WEST -- based on an incorrect interpretation of those rules. BellSouth, for its part, has brought suit against AirTouch Paging based on that carrier's failure to pay for facilities ordered out of state tariffs. Millions of dollars of outstanding liabilities are at stake. For the sake of orderly disposition of those disputes, and resolution of other potential claims arising during the period between late 1996 and the issuance of the forthcoming reconsideration order, the Commission should clarify the rights and obligations of the parties under existing rules.

Despite some apparently contradictory language in the Local Competition Order, paging service providers are not entitled to reciprocal compensation under the plain terms of the Commission's existing regulations. Section 703 is one of the regulations adopted by the Commission in Subpart H of Chapter 51 of the Commission's Rules, entitled "Reciprocal Compensation for Transport and Termination of Local Telecommunications Traffic." Section 701(a) states that "[t]he provisions of this subpart apply to reciprocal compensation for transport and termination of local telecommunications traffic between LECs and other telecommunications carriers." 47 C.F.R. § 51.701(a). The regulations then define "reciprocal compensation," for purposes of Subpart H, as an arrangement "in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier's network facilities of local telecommunications traffic that originates on the network facilities of the other carrier." 47 C.F.R. § 51.701(e). Interconnection between LECs and paging carriers cannot fall within this definition, for at least two reasons.

First, the express terms of section 51.701(e) require mutual exchange of compensation and traffic for there to be a "reciprocal compensation arrangement." 47 C.F.R. § 51.701(e). Each of the carriers must receive compensation from the other. But no traffic originates on the network of paging carriers to be terminated on the LECs' networks; LECs would thus receive no compensation at all from paging carriers. Such an arrangement simply does not qualify as "reciprocal compensation" under the plain language of the Commission's rules.

Second, reciprocal compensation refers to compensation "for the transport and termination" of traffic. The terms "transport" and "termination" are defined in sections 701(c) and 701(d) of the Commission's rules. As described above, under these definitions, paging carriers never terminate traffic. And so long as the point of interface of the paging carrier's network and the LEC's network is located at the paging carrier's terminal, the paging carriers do not transport traffic either.

Paging carriers have sought to overcome the clear language of the Commission's regulations by citing apparently contradictory discussion in the Local Competition Order, principally paragraphs 1008 and 1092. Paragraph 1008 states that "LECs are obligated, pursuant to section 251(b)(5) . . . , to enter into reciprocal compensation arrangements with all CMRS providers, including paging providers, for the transport and termination of traffic on each other's networks, pursuant to the rules governing reciprocal compensation set forth in Section XI.B. [sic] below." Local Competition Order, 11 FCC Rcd at 15997, ¶ 1008. The Commission may have generally thought that reciprocal compensation would apply to paging carriers pursuant to the Commission's rules.<sup>5</sup> As the foregoing discussion demonstrates, however, the rules do not require such reciprocal compensation arrangements for paging carriers -- indeed, such

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<sup>5</sup> Similarly, the discussion in paragraph 1092 focuses on mutual compensation which requires a quid pro quo.

arrangements are not even possible -- because paging carriers do not originate traffic that terminates on the LECs' networks.

In sum, nothing in the text of the Local Competition Order contradicts the plain language of the Commission's rules; these rules make clear that interconnection between LECs and paging carriers is not subject to reciprocal compensation so long as paging carriers do not originate, transport, or terminate traffic. But even if the language of the order were in tension with the Commission's rules, under settled Commission precedent it is the rules, not the commentary, that control. See, e.g., Memorandum Opinion and Order, Amendment of Part 90, Subparts M and S of the Commission's Rules, 4 FCC Rcd 356, 359, ¶ 33 (1989).

#### **V. NOTHING IN THE RECIPROCAL COMPENSATION RULES PURPORTS TO PROVIDE PAGING CARRIERS WITH FREE FACILITIES**

Even if the Commission were to decide -- wrongly -- that its current reciprocal compensation rules do apply to paging carriers, it should make clear that the Metzger Letter was incorrect in applying section 51.703(b) of the Commission's rules to charges for facilities, as opposed to charges for traffic. Charges for facilities -- which include non-recurring installation fees and monthly recurring fees for the point-to-point connections between LEC and paging networks -- are charges to recover the costs of providing and maintaining the facilities themselves. Facilities charges are not imposed to recover the incremental network costs created by traffic delivered over those facilities. The SBC LECs incur costs in providing facilities whether or not traffic is sent over those facilities; the costs of, and charges for, a facility are constant regardless of the volume of traffic sent over it. Facilities charges therefore are not -- as either a factual or a legal matter -- charges for "traffic."

There is simply no language anywhere in the Local Competition Order or in the Commission's regulations that requires LECs to provide facilities for interconnection to paging carriers -- or to anyone else -- for free. To do so would be ludicrous: the dedicated facilities used to bring traffic into the paging carrier's terminal would not be there at all but for the paging carrier's request for the facilities and its concomitant obligation to pay the established rate for those facilities. The state commissions have therefore made no provision for the LECs to recover these costs from their ratepayers; indeed, there is no reason that other consumers of LEC services should subsidize the paging carriers.

Although the Bureau decided to the contrary, it offered scant explanation for its view. The Bureau simply quoted section 51.703(b) of the Commission's regulations, which states that a "LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network." 47 C.F.R. § 51.703(b) (emphasis added). The Bureau then noted that the Commission had read this regulation to require LECs to "cease charging a CMRS provider or other carrier for terminating LEC-originated traffic" and to "provide that traffic to the CMRS provider or other carrier without

charge." Local Competition Order, 11 FCC Rcd at 16016, ¶ 1042 (emphasis added). Confronted with the fact that the Commission referred only to traffic -- a term that plainly signifies usage-based charges -- and never to facilities, the Bureau stated baldly that it found "no basis for the argument . . . that LECs are permitted to assess charges on CMRS carriers to recover the costs of facilities that are used by LECs to deliver traffic to CMRS carriers." Metzger Letter at 2.

The Bureau's position cannot stand. First, the Bureau ignored clear indications in the Commission's discussion that it did indeed wish to distinguish between usage-sensitive charges for traffic on the one hand and flat-rated charges for dedicated facilities on the other. The Bureau started by ignoring the context of the Commission's statement in paragraph 1042 of the Order. The Commission prefaced that statement by noting that "section 251(b)(5) prohibits charges such as those some incumbent LECs currently impose on CMRS providers for LEC-originated traffic." Local Competition Order, 11 FCC Rcd at 16016, ¶ 1042 (emphasis added). At the time that order was adopted, all LECs imposed facilities-based charges under valid state tariffs or pursuant to private agreement. Some LECs, on the other hand, operated under tariffs that additionally imposed usage-sensitive charges for traffic. It was obviously this latter type of charge that was the focus of the Commission's concern.

Second, the Commission has shown that, when it wishes to address facilities-based charges, it knows how to do so explicitly. In section 51.709(b), for example, the Commission referred to the rates for "a carrier providing transmission facilities dedicated to the transmission of traffic." See 47 C.F.R. § 51.709(b) (emphasis added). Likewise, in the Local Competition Order, the Commission discussed at some length "the rates for transmission facilities that are dedicated to the transmission of traffic." Local Competition Order, 11 FCC Rcd at 16027, ¶ 1062. The Commission could easily have stated that LECs are required to cease charging for traffic and for dedicated transmission facilities; its failure to do so is strong reason to conclude that it did not intend to do so. And in the LEC-CMRS NPRM, the Commission explained the reasons for adopting different rate structures for dedicated facilities -- the costs of which should be recovered on a non-traffic-sensitive basis -- and "cost of capacity," that should be recovered through traffic-sensitive charges. See 11 FCC Rcd at 5041, ¶ 44.

Section 709(b) does not otherwise support the paging carrier's position below; the Bureau did not rely on that provision, or even cite it, and for good reason. First, section 709(b) applies by its terms only to "transmission facilities dedicated to the transmission of traffic between two carriers' networks." 47 C.F.R. § 51.709(b) (emphasis added). But traffic does not flow between the LEC's network and a paging carrier's network; instead it flows only one way: from the LEC's network to the paging carrier's terminal. Moreover, because there is never a calling path established between the LEC's network and the paging carrier's end-user, there is no traffic flowing from one network to the other at all -- rather, the traffic stops at the paging carrier's terminal.

Second, no party has ever suggested that section 51.709(b) applies in any context other than negotiated interconnection agreements reached pursuant to section 252 of the Act. The

Commission made clear that section 709 applies to rate-making by state commissions in the context of establishment of transport rates under the procedures of section 252. See 47 C.F.R. § 51.709(a) (vacated by Iowa Utils. Bd., 120 F.3d at 800 n.21; Local Competition Order, 11 FCC Rcd at 16027, ¶¶ 1061, 1062.

When the Commission said that LECs must cease charging for traffic originated on the LECs' network, it meant what it said and no more. As the foregoing discussion shows, the distinction between charges for traffic and charges for facilities is significant under the old interconnection regime just as it is under the new. The Commission should make clear that the Bureau's statement to the contrary was in error. Without such Commission action, LECs face millions of dollars in liability for facilities that paging carriers have ordered but for which they have ceased to pay.

**VI. IF LECS MUST BEAR THE COSTS OF FACILITIES USED TO DELIVER TRAFFIC TO PAGING CARRIERS' TERMINALS, LECS MUST BE ABLE TO CONFIGURE THEIR NETWORKS EFFICIENTLY**

Finally, if the Commission were to uphold the Bureau's interpretation of its existing rules and determine that section 51.703(b) does in fact apply to facilities as well as to traffic, it is urgent that the Commission clarify that this does not give paging carriers carte blanche to order whatever facilities they wish without any obligation to pay.

Nothing in the Commission's rules or the Local Competition Order requires a LEC to use any particular type of facility to transport traffic originated on its network to a paging carrier's terminal. If the Bureau's December 30 letter is valid, a LEC must attempt to recover the network costs associated with transport of traffic originated on a LEC's network to a paging carrier's terminal from the LEC's local exchange customers. LECs are therefore free to implement rating points for paging numbers in a way that permits this cost recovery.

One implication of this is that if a paging carrier wishes to receive traffic originated throughout a LATA at a single paging terminal in that LATA, any calls received from local exchange areas other than the one in which its paging terminal is located may be rated by the LEC as intraLATA toll calls. In other words, any time a call originated on the LEC's network travels over the LEC's network from a distant local exchange area to the local exchange area where the paging terminal is located, the LEC is permitted to recover intraLATA toll charges from the caller.

If paging carriers wish to offer local calling in multiple local exchange areas served by a single terminal, therefore, they must compensate the LECs for these arrangements. One such arrangement is reverse billing, where the paging carrier pays the intraLATA toll charges incurred by callers to its paging terminal. Another such arrangement is the provision of "FX"-type facilities, dedicated lines used to transport traffic from a distant local exchange area to a paging carrier's distant terminal. If a paging carrier chooses to make use of such services and facilities,

nothing in the Commission's rules, the Local Competition Order, or the Bureau's letter prevents LECs from charging for them.

Certainly, the Bureau's letter should not be used to justify a paging carrier in ordering FX-type facilities out of existing State tariffs and then refusing to pay for them. If LECs were prevented from recovering these costs, they would have to attempt to recover the intraLATA toll charges incurred by callers to a distant paging carrier's facilities from local exchange customers generally; such an arrangement would encourage inefficient calling patterns. Again, nothing in the Commission's rules or in the Local Competition Order mandates this result.

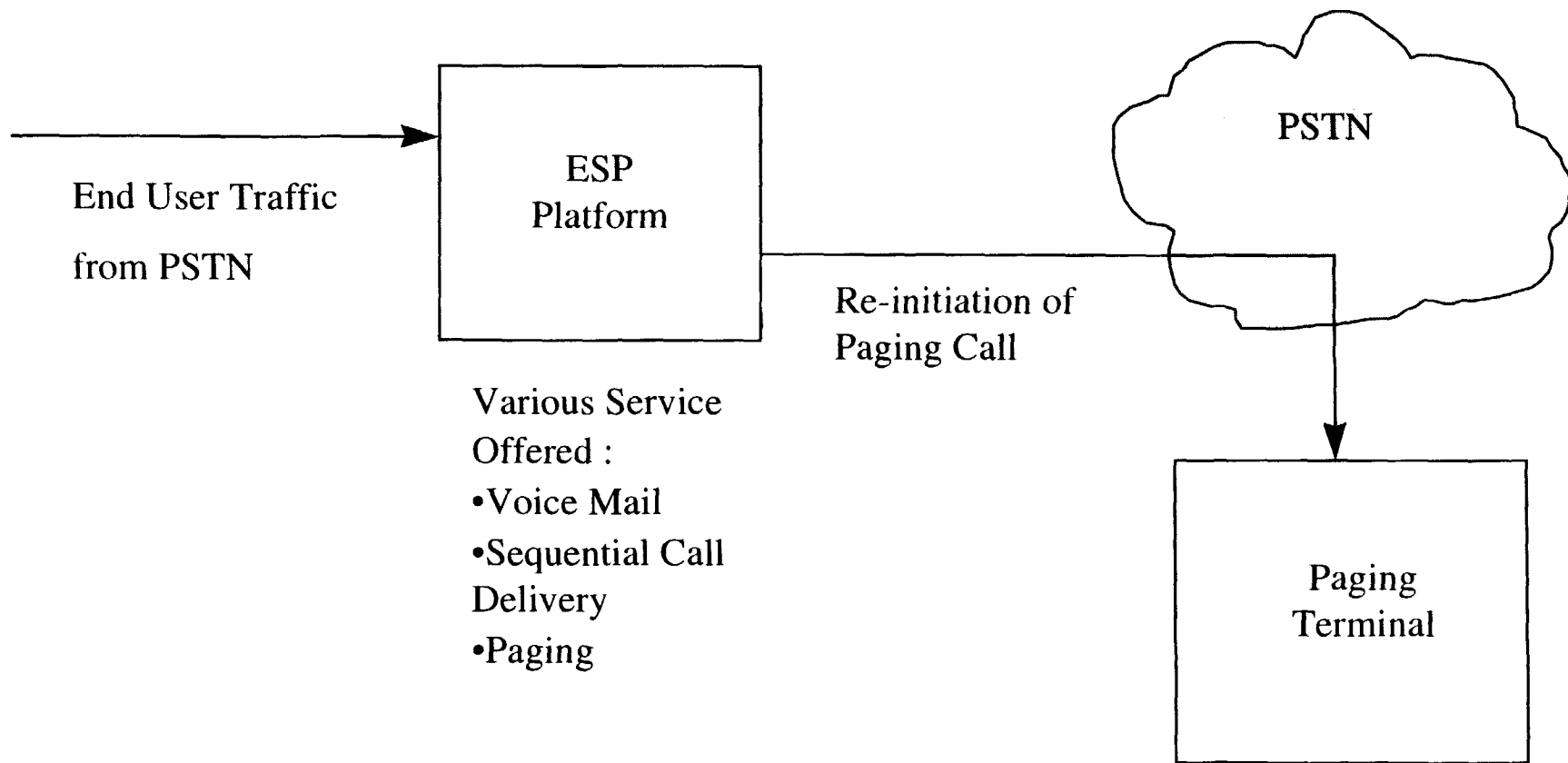
As the Commission is well aware, paging carriers have put forward an extreme interpretation of current legal requirements, one in which paging carriers can dictate LEC network configuration yet pay for a small fraction of the facilities they select. Under these circumstances, effective negotiation is impossible; worse, paging carriers have shunned almost completely the negotiation process established by section 252 -- proof of their reluctance to put their extreme interpretations of the law to the test. As LECs large and small have made clear, the current situation cannot be sustained for long; the LECs must reduce any unrecoverable network costs. It would be far less disruptive to do so in the context of productive negotiations with the paging carriers, based on a mutual understanding of binding legal requirements, rather than unilaterally after proper notice. It is within the power of the Bureau and the Commission to make such productive negotiations possible.

## **Paging demand: Type 1 FX facilities**

(U S WEST figures)

- 22 percent of all Type 1 trunks (1,172) are foreign exchange (FX) facilities. Of these:
- 11 trunks are over 200 miles long (the longest is 268 miles)
- Over 100 miles: 94 trunks (8%)
- Over 50 miles: 374 trunks (32%)
- Over 25 miles: 724 trunks (62%)
- Over 10 miles: 952 trunks (81%)

# Enhanced Service Provider with Paging Option



# Enhanced Service Provider with Paging Option

- ESP offers a variety of services off its platform
- Some options include the initiation of a paging message
- ESP has secured paging numbers from a paging provider
- ESP originates a call using the PSTN to a paging number

**EX PARTE**  
**USTA PAGING INTERCONNECTION SEMINAR**  
**JUNE 16, 1998**

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